

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton; and  
Robert G. Taub

Milan Post Office  
Milan, Kansas

Docket No. A2012-85

ORDER AFFIRMING DETERMINATION

(Issued March 9, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”<sup>1</sup> The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

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<sup>1</sup> United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On November 29, 2011, Michele Norris (Petitioner) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Milan, Kansas post office (Milan post office).<sup>2</sup> The Final Determination to close the Milan post office is affirmed.<sup>3</sup>

## II. PROCEDURAL HISTORY

On December 13, 2011, the Commission established Docket No. A2012-85 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.<sup>4</sup>

On December 14, 2011, the Postal Service filed the Administrative Record with the Commission.<sup>5</sup> The Postal Service also filed comments requesting that the Commission affirm its Final Determination.<sup>6</sup>

On February 6, 2012, the Public Representative filed reply comments.<sup>7</sup>

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<sup>2</sup> Petition for Review received from Michele Norris regarding the Milan, KS Post Office 67105, November 29, 2011 (Petition). Attached to the Petition is a list of 39 signatures of Milan citizens opposed to the closure of the Milan post office.

<sup>3</sup> The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

<sup>4</sup> Order No. 1041, Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 13, 2011.

<sup>5</sup> The Administrative Record is attached to the United States Postal Service Notice of Filing, December 14, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Milan, KS Post Office and Establish Service by Rural Route Service (Final Determination).

<sup>6</sup> United States Postal Service Comments Regarding Appeal, January 23, 2012 (Postal Service Comments).

<sup>7</sup> Public Representative’s Reply Comments, February 6, 2012 (PR Reply Comments).

### III. BACKGROUND

The Milan post office provides retail postal services and service to 31 post office box customers. Final Determination at 2. No delivery customers are served through this office. *Id.* The Milan post office, an EAS-53 level facility, provides retail service from 8:00 a.m. to 12:00 p.m. and 1:45 p.m. to 4:00 p.m., Monday through Friday, and 8:00 a.m. to 9:45 a.m. on Saturday. *Id.* Lobby access hours are 8:00 a.m. to 5:30 p.m., Monday through Saturday. *Id.*

The postmaster position became vacant on September 30, 2008, when the Milan postmaster retired. *Id.* A non-career officer-in-charge (OIC) was installed to operate the office. *Id.* at 2, 6. On December 1, 2011, the Postal Service suspended service to the Milan post office because the OIC resigned. Administrative Record, Item No. 2.<sup>8</sup> In a letter to its customers, the Postal Service stated that it was unable to find a replacement for the OIC within a 35 mile area, and was, therefore, imposing an immediate emergency suspension of operations at the Milan post office. Administrative Record, Item No. 3. Retail transactions average four transactions daily (five minutes of retail workload). Final Determination at 2. Office receipts for the last 3 years were \$5,525 in FY 2008; \$5,066 in FY 2009; and \$5,277 in FY 2010. *Id.* There are no permit or postage meter customers. *Id.* By closing this office, the Postal Service anticipates savings of \$21,241 annually. *Id.* at 6.

After the closure, retail services will be provided by the Argonia post office located approximately 7 miles away.<sup>9</sup> Delivery service will be provided by rural carrier through the Argonia post office. *Id.* The Argonia post office is an EAS-13 level office, with retail hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, and 8:30 a.m. to 10:00 a.m. on Saturday. *Id.* Two hundred fifty-one post office boxes are available. *Id.*

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<sup>8</sup> Administrative Record, Item No. 2 contains conflicting information, including both a notice that there was no emergency suspension on one page, followed by a notice of the emergency suspension.

<sup>9</sup> *Id.* at 2. MapQuest estimates the driving distance between the Milan and Argonia post offices to be approximately 6.8 miles (12 minutes driving time).

The Postal Service will continue to use the Milan name and ZIP Code. *Id.* at 6, Concern No. 3.

#### IV. PARTICIPANT PLEADINGS

*Petitioner.* Petitioner opposes the closure of the Milan post office. Petitioner contends that rural route service will not provide regular and effective service to Milan citizens and notes specific inconveniences of the replacement service on Milan residents. Petition at 1. Petitioner argues that Milan citizens are entitled to the same efficient postal service provided to their counterparts in urban areas. *Id.*

*Postal Service.* The Postal Service argues that the Commission should affirm its determination to close the Milan post office. Postal Service Comments at 1. The Postal Service believes the appeal raises three main issues: (1) the effect on postal services, (2) the impact on the Milan community, and (3) the economic savings expected to result from discontinuing the Milan post office. *Id.* The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Milan post office should be affirmed. *Id.* at 1, 13.

The Postal Service explains that its decision to close the Milan post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- no projected population, residential, commercial or business growth in the area;
- minimal impact on the community; and
- expected financial savings.

*Id.* at 4. The Postal Service contends that it will continue to provide regular and effective postal services to the Milan community when the Final Determination is implemented. *Id.* at 4-5.

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioner regarding the effect on postal services, effect on the Milan community, economic savings, and effect on postal employees. *Id.* at 12-13.

*Public Representative.* The Public Representative identifies three issues concerning the Milan post office that involve matters of interest to the general public. PR Reply Comments at 3. First, she questions whether the Postal Service will realize the full amount of the estimated cost savings. *Id.* at 4. Second, she asserts that the Postal Service failed to fully address a question in the Administrative Record from a customer concerning the impact on a railroad stop that required a post office to remain open. *Id.* at 5. The Public Representative observes that in the absence of a response in the record, it is not certain whether the headquarters' reviewer fully determined the closing's effect on the Milan community. *Id.* at 5-6. She suggests returning this matter to the Postal Service for the purpose of completing the record. *Id.* at 6. Third, the Public Representative is concerned that Milan customers might assume that the Mayfield post office is a long-term option for retail services; however, she notes that the Mayfield post office is on the July 26, 2011 RAOI list and the Geuda Springs post office, also located in Sumner County, is currently the subject of a docketed appeal. *Id.* The Public Representative also asks that the Postal Service clarify the current status of the Milan post office due to reports that it may already be closed. *Id.* at 7.

## V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by

substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. *Id.* § 404(d)(5).

The record indicates the Postal Service took the following steps in providing notice of its intent to close. On March 31, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Milan post office. Final Determination at 2. A total of 87 questionnaires were distributed to customers of the Milan post office. *Id.* Other questionnaires were made available at the retail counter of the Milan post office. *Id.* A total of 32 questionnaires were returned. *Id.* On April 12, 2011, the Postal Service held a community meeting at the Milan Community Center to address customer concerns. *Id.* The Final Determination indicates that zero (0) customers attended. *Id.* However, it appears that 18 customers attended based on the “Community Meeting Roster” in the Administrative Record.<sup>10</sup>

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<sup>10</sup> See Administrative Record, Item No. 24. The next item of the Administrative Record contains analysis of the customer concerns received at the community meeting. See Administrative Record, Item No. 25. This apparent error in the Final Determination is immaterial.

The Postal Service posted the proposal to close the Milan post office with an invitation for comments at the Milan and Argonia post offices from July 29, 2011 through September 29, 2011. Final Determination at 2. The Final Determination was posted at the same two post offices from November 2, 2011 through December 6, 2011. Administrative Record, Item No. 49.

On December 9, 2011, the Postal Service sent a letter to customers of the Milan post office explaining that the OIC had resigned and that services would be suspended. Administrative Record, Item No. 3. Service was suspended after close of business on December 1, 2011. *Id.* The Postal Service contends that this temporary suspension is necessary in the absence of employees to run the facility; however, its suspension is not tantamount to a permanent discontinuance, which is the subject of this appeal. Postal Service Comments at 3 n.3.

Section 404(d)(4) states: “The Postal Service shall take no action to close or consolidate a post office until 60 days after its written determination is made available to persons served by such post office.” At the time the Postal Service imposed its emergency suspension, 30 days of the 60-day period mandated by section 404(d)(4) remained.

The Administrative Record clearly indicated that the Milan post office was suspended after close of business on December 1, 2011. See Administrative Record, Item Nos. 2, 3. Postal customers with little or no background in postal law cannot be expected to understand the implications of an emergency suspension for their rights under section 404(d)(4). As a matter of course, customers should receive timely notification of emergency suspensions, and an explanation as to how that suspension may affect appeal proceedings. In this case, the Postal Service contends that this temporary suspension was necessary in the absence of employees to run the facility. Postal Service Comments at 3 n.3.

Despite any concerns with the timing of the emergency suspension, based on the facts in the Administrative Record, the Postal Service has satisfied the requirements of 39 U.S.C. § 404(d).

## B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

*Effect on the community.* Milan, Kansas is an incorporated community located in Sumner County, Kansas. Administrative Record, Item No. 16. The community is administered politically by the Mayor and Village Board. *Id.* Police protection is provided by the Sumner County Sheriff. *Id.* Fire protection is provided by the Argonia KS Volunteer Fire Department. *Id.* The community is comprised of farmers and those who work in local businesses or commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. See *generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Milan community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Milan post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 5-6.

The Postal Service asserts that Petitioner raises the issue of the effect of closing the Milan post office upon the Milan community. Petition at 1; Postal Service Comments at 10. The Postal Service notes that this issue was extensively considered and contends that the Milan community identity will be preserved by continuing the use of the Milan name and ZIP Code in addresses. Postal Service Comments at 10.

Petitioner contends that customers of the Milan post office should receive the same effective postal services that are provided in urban areas. Petition at 1. The

Postal Service asserts that post offices are reviewed on a case-by-case basis and explains that when there is a vacancy in any small post office, it is customary to conduct a study of the business vacancy and investigate the feasibility of providing service by alternative means. Postal Service Comments at 10. It further contends that in this case, it was determined that the Postal Service could continue to provide a maximum degree of effective and regular postal services to the community through a more cost effective means. *Id.*

The Public Representative states that there is an unresolved community concern from the Administrative Record, regarding a question about a rail stop requiring a post office. PR Reply Comments at 5. The Public Representative encourages the Commission to remand the case to the Postal Service “for the purpose of completing the record...” consistent with the interests of the general public. *Id.* at 6.

The Postal Service’s response in the record indicates that it would follow-up with the customer that expressed the concern about a railroad stop requiring a post office. See Administrative Record, Item No. 25, Concern No. 1.

The Administrative Record would contain more relevant information for review, both by Postal Service personnel and participants in this appeal, if the Postal Service were to include all its responses in the record. However, given that the Postal Service’s indication that it would follow-up with the specific customer, the absence of a response in the record is immaterial to this appeal.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

*Effect on employees.* The Postal Service states that the Milan postmaster retired on September 30, 2008 and that an OIC has operated the Milan post office since then. Final Determination at 2. It asserts that after the Final Determination is implemented, the temporary OIC will either be reassigned or separated and that no other Postal Service employee will be adversely affected. *Id.* at 6.

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Milan post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

*Effective and regular service.* The Postal Service contends that it has considered the effect the closing will have on postal services provided to Milan customers. Postal Service Comments at 5. It asserts that customers of the closed Milan post office may obtain retail services at the Argonia post office located 7 miles away. Final Determination at 2. Delivery service will be provided by rural carrier through the Argonia post office. *Id.* The Milan post office box customers may obtain Post Office Box service at the Argonia post office, which has 251 boxes available. *Id.*

For customers choosing not to travel to the Argonia post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 5. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.*

Petitioner raises the issue of effective and regular service and notes inconveniences that residents would face as a result of the Milan post office closing. Petition at 1. Specifically, Petitioner expresses concern regarding mail security. *Id.* The Postal Service responds that customers may place a lock on their mailboxes. Postal Service Comments at 6.

Petitioner also expresses concern regarding the purchase of money orders and stamps, and the sending and receipt of accountable mail. Petition at 1. The Postal Service contends that customer convenience may actually be enhanced upon implementation of the Final Determination because rural carrier service would alleviate the need for customers to travel to the post office for many retail services and would provide customers with 24-hour access to their mail. Postal Service Comments at 7. It explains that Stamps by Mail and Money Order Application forms are available from the carrier for customer convenience. *Id.* at 5, 7-8. Regarding the accountable mail concern, the Postal Service asserts that special services such as certified, registered, Express Mail, delivery confirmation, signature confirmation, and COD may be obtained

from the carrier by leaving a note in the mailbox, along with the appropriate payment. *Id.* at 8. As for the receipt of accountable mail, the Postal Service explains that if the customer lives less than one-half mile away from the line of travel, the carrier will attempt delivery of accountable items to the customer's residence. *Id.* If the customer lives over one-half mile away or is not home when delivery is attempted, the Postal Service explains that a notice will be left in the mailbox and the attempted delivery items will be taken back to the administrative post office. *Id.* It notes customers may pick up the item at the post office, request redelivery on another day, or authorize delivery to another party. *Id.*

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

*Economic savings.* The Postal Service estimates total annual savings of \$21,241. Final Determination at 6. It derives this figure by summing the following costs: postmaster salary and benefits (\$20,492) and annual lease costs (\$4,966) minus the cost of replacement service (\$4,217). *Id.*

The Public Representative asserts that the estimated cost savings from the closure are inaccurate. PR Reply Comments at 4. The Postal Service contends record evidence supports its determination that rural carrier service is more cost effective than maintaining the Milan postal facility and postmaster position. Postal Service Comments at 11.

The Milan post office postmaster retired on September 30, 2008. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67 United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; and Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Milan post office has been staffed by an OIC for approximately three and a half years,

even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

## VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Milan post office is affirmed.<sup>11</sup>

*It is ordered:*

The Postal Service's determination to close the Milan, Kansas post office is affirmed.

By the Commission.

Ruth Ann Abrams  
Acting Secretary

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<sup>11</sup> See footnote 3, *supra*.

## DISSENTING OPINION OF VICE CHAIRMAN LANGLEY AND CHAIRMAN GOLDWAY

On December 1, 2011, operations at the Milan post office were suspended. The Administrative Record states that the non-career employee in charge of the post office resigned effective November 30, 2011, and the post office is suspended due to the lack of qualified personnel.<sup>12</sup> It appears that a suspension notice dated December 9, 2011, was provided to postal customers informing them that effective December 2, 2011, services at the post office were suspended, but this change “will not lead to a formal proposal unless we conclude that it will provide a maximum degree of regular and effective service.”<sup>13</sup> Previously, the Final Determination had been posted November 2, 2011.

Given that an appeal to the closing of the Milan post office had already been received by the Commission on November 29, 2011, the Postal Service should have been more explicit in its notice to customers about the suspension, its implications on the Final Determination, and the appeal that was filed. Public understanding and perception are important aspects of all discontinuance studies or emergency suspensions. The Postal Service and the customers it serves benefit by addressing all issues fully during such studies and suspensions.

In addition, the Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility for more than 3 years, since September 2008, not an EAS-53 postmaster, and reflect the PMR’s salary and benefits in its cost savings analysis.

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<sup>12</sup> See Administrative Record, Item No. 2 at 1A.

<sup>13</sup> See Administrative Record, Item No. 3 at 1A.

We find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Milan post office and should be remanded.

Nanci E. Langley

Ruth Y. Goldway